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Current Topics.

The Master of the Rolls.

A PARTICULARLY happy invitation at the present time is that recently extended by the judges of the Supreme Court of the State of New York and the New York State Bar Association to the Master of the Rolls, Sir WILFRID GREENE, to attend the celebration of the 250th anniversary of the foundation of the Court. At a moment when the ideals of freedom and equality before the law have been temporarily eclipsed on a large part of the European continent, it is fitting that the English-speaking peoples should draw closer together and interchange not only mutual political support but also cultural and juristic communication. From the American point of view, for example, the Editor of the *American Bar Association Journal* states, in the March issue: "One of the most pressing problems before the Bar of America, and immediately before Congress, is to determine the extent to which judicial process shall be exercised in the domain of administrative law, and the method by which that process will be carried out." In the same issue there is published an address delivered by Mr. ROSCOE POUND before the New York State Bar Association on 25th January, 1941, from which it is apparent that Congress is faced with the same problems which were so admirably discussed in this country some years ago in LORD HEWART'S "New Despotism," and dealt with by the Committee on Ministers' Powers under the chairmanship of The Right Hon. Sir LESLIE SCOTT, K.C., as he then was, in their report issued in June, 1932. The common basis of American and English judicial problems and ideals is impliedly emphasised in Mr. POUND'S address, in which reference is made to the tendency of administrative agencies to ignore "two maxims which have long been held fundamental to justice (1) that no one is to be judge in his own case, and (2) that both sides of a controversy shall be heard, and that no one shall be prejudiced by an adverse determination without an opportunity of being fully heard and without being fully heard and fully apprised of what may be used against him in reaching a decision and allowed to argue with respect to it, if he desires to take advantage of the opportunity." The address also referred to "the Anglo-American doctrine" that "whatever is done by anyone is subject to be looked into in ordinary legal proceedings, conducted in the ordinary courts, by the ordinary procedure of the law of the land, whenever it injures or is claimed by some person to injure the latter's rights." The Master of the Rolls, who has accepted the American invitation, will, as the British representative at a notable celebration, be able both to give and receive at first hand valuable information as to the constant growth and reaffirmation of justice in a free democracy.

The Liabilities (War-Time Adjustment) Bill.

ON the motion for the second reading of the Liabilities (War-Time Adjustment) Bill in the House of Commons on 24th April, the Attorney-General contrasted the conditions in the last war, under which legislation similar to the present Courts (Emergency Powers) Acts was considered satisfactory, with those existing in the present war, when something further is called for by reason of such different and comparatively novel circumstances as evacuation, intensive bombing and so on. The object of the proposed new procedure was not so much to remove the stigma of bankruptcy by calling it by a new name as to enable a person who had carried on a flourishing business in normal times to have his liabilities suspended until the return of less hazardous times, when he might be able to restart his business. The Courts (Emergency Powers) Acts, which in their present form apply only to pre-war contracts, were to be made to apply to post-war contracts also, as in a modern war nothing could be foreseen from day to day, and the argument that if people entered into contracts after war started they had their eyes open to war conditions was old-fashioned. In the course of the debate a number of speakers drew attention to the inadequacy of the proposal to recruit the liabilities adjustment officers from the ranks of official receivers. Mr. GARRO JONES pointed out that the process of debt adjustment was not a bankruptcy process, and Mr. MOELWYN HUGHES quoted the description of the measure as "bankruptcy without busting, insolvency without insult." Major MILNER too, pointed out that official receivers were appointed by the Board of Trade, and not by the Lord Chancellor, and their functions, which were largely formal, involved little or no degree of help or advice to the debtor. At times he was somewhat of a taskmaster and even of a prosecuting counsel. He hoped that consideration might be given to the appointment of solicitors and accountants who had a vast experience precisely of the nature required by the Bill. Readers will recall our previous suggestions in these columns (*ante*, pp. 110 and 170) that "lawyers and other professional persons who had had experience of reaching settlements whether in or out of court, or at creditors' meetings" would be the best conciliators. Mr. SILVERMAN agreed that the official receiver was almost the last type of man to appoint, not because of any lack of sympathy on his part, but because of the whole character of his training and the things he has to do in his professional career. He suggested that county court registrars had exactly the right sort of experience, particularly with regard to administration orders. The Solicitor-General, replying on behalf of the Government, agreed that someone was wanted who could divest himself of the old bankruptcy atmosphere. There was no intention to appoint official receivers *en bloc*, though they might be suitable in some cases.

Small Traders.

IN his reply the Solicitor-General dealt with a number of points which had been raised in the course of the debate, and particularly with a criticism by Mr. DOLAND that the small trader who had managed to save a nest-egg of £200 or £300 would find that he had to pay it all away to his creditors as the price of a settlement. Mr. DOLAND had pointed out that the Parliamentary Secretary to the Board of Trade had on 10th April, 1941, envisaged the time when small shopkeepers would have to realise their present stocks, invest the money in Government securities, and find other jobs

for the time being, so that when the war was over they might go back to their shops with a certain amount of capital to re-equip them and enable them to start again. The Solicitor-General admitted that a small trader could not say to his landlord that he could not pay his rent if he had received £200 or £300 from the sale of his stock, but it was clear from cl. 3 (1) (*b*) of the Bill that relief was not limited to those cases in which there would be what was normally called insolvency, as the debtor was given a right to apply even though he was in a position to pay his debts, and to pay them in full. With regard to the question raised by Major MILNER that there may be an opportunity for appeal to a higher court, the Solicitor-General said that there was an appeal in s. 34 of the County Courts Act, 1934. With regard to the rules to be made by the Lord Chancellor under the Act, and Major MILNER's suggestion that they might be sent to The Law Society, which had great experience in those matters, the Solicitor-General said that The Law Society would certainly be consulted about the rules. Mr. RHYS DAVIES criticised the Bill on the ground that it was assumed by the Government that trade was automatic, that you could close a shop to-day, open it in six months' time and start business all over again just where you left off. He supposed that it was too much to ask that the rules to be made by the Lord Chancellor would contain provision to restart the small shopkeeper. The Solicitor-General pointed out that the Government realised the difficulties of the small shopkeeper, and although they could not contemplate dealing with them in the Bill on the generous lines for which Mr. RHYS DAVIES asked, they were doing all they could. In conclusion the Solicitor-General said that the Bill did something to meet an exceedingly difficult problem. The whole situation moved quickly and new problems developed. It was a step on the road, and in the light of the experience gained the Government might be able to take further steps to obviate, as far as possible, the crüel hardships which were inseparable from war.

Fire Prevention.

IN a letter to *The Times* of 26th April Mr. T. P. H. BEAMISH, writing from the House of Commons, observed that it had been stated, with a near approximation to truth, that fire, the greatest destroyer known to man, had caused 90 per cent. of the war damage. He said that the fire-fighters deserved the encouragement of a complete overhaul of the whole organisation, and, perhaps, the system whereby each local authority controlled its own brigade was most open to criticism. More than thirty years went by after motor cars became reliable and telephones widespread before rural parishes were relieved of responsibility for fire-fighting, and now a district council acted for them. The London Fire Brigade, Mr. BEAMISH pointed out, which controlled about one-third of the whole fire-fighting capacity of the country, was incomparably the most efficient because of its size and organisation. Some of the difficulties which had arisen during recent enemy attacks were lack of local knowledge, lack of co-ordination and command, dissimilar hours of work, lack of rest and food and billeting accommodation, lack of water, lack of equipment, and, finally, an astonishing failure to link up fire prevention and fire fighting. A letter from Mr. NICOLAS BENTLEY in *The Times* of 28th April emphasises the need for substituting regional for chaotic local control. The answer to the enemy's vicious attack is not the Fire Prevention (Business Premises) Order alone, which, as was pointed out in this journal last week (*ante*, p. 195), can do little more than mobilise what must be in some cases inadequate man power for the watching of premises during the night. The remedies must be the thorough reorganisation and co-ordination of the fire-fighting and fire-watching services of local authorities, the appointment of efficient fire-fighting chiefs, and the multiplication of water supplies and equipment and appliances of every kind. In the absence of measures such as these it is useless to complain of the inadequacy of the Fire Prevention (Business Premises) Order. The "Battle of the Flames," as Mr. HERBERT MORRISON, with his aptitude for slogans, has called it, will be won by the organisation and equipment provided by the Ministry of Home Security and the local authorities, and although, as Mr. MORRISON pointed out in his speech at Guildford on 26th April, our total fire strength in men and equipment was fifteen to twenty times greater than in normal times, and in target areas up to twenty-five times, those with eyes to see are witnesses that even this is not enough. If, as the Minister stated, we are moving rapidly towards the point where threatened spots can draw from near and far all the help that they need, that motion, in order to be effective, must be rapid.

Danger of Lighted Match.

IF ever judicial confirmation were needed of the truth of holy writ where it tells us "how great a matter a little fire kindleth," it will be found in the recent case decided in Northern Ireland (*In re Northern Ireland Road Transport Board* v. *The Century Insurance Company* [1941] N.I. 77) where the facts were these: a motor lorry was backed into a garage for the delivery of a quantity of petrol. While the delivery was in progress the driver lit a cigarette, and, having done so, threw down the match, which ignited some material on the floor and a fire started where the nozzle of the hose was discharging into the tank. This eventually led to an explosion which destroyed the lorry, a motor car, which was standing in the street, and, furthermore, damaged no fewer than eleven houses. Such a concatenation of injury in due course led to litigation, the result of which was the inevitable one, namely, that the act of the driver in throwing down the lighted match was in the circumstances negligence in respect of which his employer was liable, but as he was covered by insurance it fell to the insurance company to meet the cost. The moral is the very obvious one: Beware of throwing down lighted matches in the vicinity of petrol.

War Damage: Claim Forms.

ON 29th April the War Damage Commission published a number of forms which will soon become familiar to the general public for the making of claims under Pt. I of the War Damage Act, 1941, relating to compensation for damage to land and buildings. Form C.1, which is the simplified equivalent of Form V.O.W.1, should be capable of being filled in by any claimant of average intelligence, without professional assistance. It is made quite clear in the explanatory pamphlet Form C.1A that a mistake in completing Form C.1 as to the extent of the damage does not prejudice the claimant as only an expression of opinion is required. The query as to the claimant's "interest" in the damaged property can, it appears, be answered simply by stating "freeholder," "leaseholder," "tenant," "mortgagee," "beneficiary under a trust," or some similarly non-detailed description. At that stage no professional assistance should be required, but as some people have a "complex" with regard to filling in forms, solicitors will, no doubt, be asked to lend their assistance in such cases. The explanatory pamphlet, Form C.1A, states that Form C.1 must be filled up and sent to the Regional Office of the War Damage Commission within thirty days of the occurrence which causes the war damage, or which brings the total claim over £5. The Commission has power to extend the period of thirty days and will be ready to do so if the omission is due to good cause. Forms C.2 and C.2V (of which the latter is now ready) are forms of claim for temporary works payments and cost of works payments. The former is sent in response to C.1, and the latter in response to V.O.W.1. Form C.3 is sent in response to C.1 where the house has suffered total loss and C.3V is a similar form sent in response to V.O.W.1. Professional assistance will be required to complete most of these. Form C.3V in particular requires the most detailed information with regard to the interest of the claimant in the property, including, for example, particulars of such mysteries as restrictive covenants, quasi easements, easements, etc., which are certainly not explained in Form C.1A (the explanatory pamphlet). The notes contained in the pamphlet are excellent, but perhaps we may be permitted one criticism. While **true in most cases**, it is inaccurate and misleading to say that "if property has been leased for more than seven years" the value payment is to be divided between the freeholder and the leaseholder, as ss. 9 (2) and 95 (1) make it clear that a tenancy for a term of more than seven years subject to the landlord's right to end the tenancy at or before the end of the term is not a "proprietary interest" such as to justify the receipt of part of a value payment. A similar observation applies to the unnecessarily abbreviated definition of a "short tenancy" as "a tenancy granted for a period not exceeding seven years."

Recent Decisions.

IN *In re Ward, deceased; Public Trustee* v. *Berry* (*The Times*, 24th April), the Court of Appeal (MACKINNON, CLAUSON and LUXMOORE, L.JJ.) held, reversing the decision of FARWELL, J., that a residuary gift by will was a valid charitable bequest in favour of "the Archbishop of Westminster or other the head of the Roman Catholic Church in England for the time being on trust that he shall forthwith in his absolute discretion devote the same to the furtherance of educational or charitable or religious purposes for Roman Catholics in the British Empire in such manner in all respects as he shall think fit," and was not invalid for uncertainty.

An Auctioneer's Warranty.

A PERSON sees that certain property is to be sold on a certain day at a certain place. He desires to buy that property, and perhaps at considerable personal inconvenience and at some expense he journeys to that place, only to find that the property has been sold by private contract, or has been withdrawn from the sale. Has he any right to claim damages against the auctioneer for a breach of his advertised intention to sell? He has certainly suffered damage by the auctioneer's change of intention, and the aggrieved would-be purchaser in *Harris* v. *Nickerson* (1873), L.R. 8 Q.B. 286, sought to make the auctioneer liable for it. Mr. Justice Blackburn summarised the plaintiff's claim as follows: "The plaintiff says, inasmuch as I confided in the defendant's advertisement and came down to the auction to buy the furniture . . . and have had no opportunity of buying, I am entitled to recover damages from the defendant, on the ground that the advertisement amounted to a contract by the defendant with anyone that should act upon it, that all the things advertised would be actually put up for sale, and that he would have an opportunity of bidding for them and buying." It must be admitted that this sounds fair, but the mere declaration of an intention is not the same as a definite offer. As Lord Cozens-Hardy said in *Re Fickus* [1900] 1 Ch. 331: "A mere representation that the writer intends to do something in the future is not, though the person to whom it is made relies upon it, sufficient to entitle that person to obtain specific performance or damages. There must be a contract in order to entitle the party to obtain any relief." In *Harris* v. *Nickerson* the court had no difficulty in holding that there was no contract that the goods in question should be put up for sale, and gave judgment for the auctioneer. Some practitioners state that the advertised sale by auction is subject to the property being previously sold by private contract, but, as *Harris* v. *Nickerson* shows, this is not necessary. Suppose, however, that the property is put up for sale and is knocked down to a purchaser at a price lower than that which the vendor has instructed the auctioneer to make the reserve price, what redress has the purchaser?

The vendor cannot be liable, as the auctioneer was his agent to sell for not less than the reserve price, and as the Master of the Rolls said in *Fay* v. *Miller, Wilkins & Co.* (1941), page 213 of this issue: "Apart from the cases of holding out, an agent must act within the limits of his actual authority, express or implied. If he purports to make a contract with a third person on behalf of his principal which exceeds his actual authority, the principal is not bound." This may seem hard on the purchaser, who may have no knowledge of the limit of the auctioneer's authority, though if the conditions empower the vendor to fix a reserve price the purchaser is put on inquiry (see the last-mentioned case). The next question is whether the purchaser can sue the auctioneer for breach of warranty of authority to sell. In *McManus* v. *Fortescue* [1907] 2 K.B. 1, there was a condition of sale that "each lot will be sold subject to a reserve price, and the vendors reserve the right of bidding up to such reserve price."

The plaintiff bid £85 for a lot and it was knocked down to him. The auctioneer then discovered that the reserve price for the lot was £200, so he withdrew it and refused to sign a memorandum of sale or to accept a deposit from the purchaser. The fall of the hammer amounted "to an acceptance of the offer of the bidder, but that offer was . . . conditional on the reserve price being reached, and a conditional offer cannot be treated as a general and unconditional one," *per* Collins, M.R. *Fay* v. *Miller, Wilkins & Co., supra*, at first sight looks very like *McManus* v. *Fortescue*. There was a reserve price of £750 on a lot, but the auctioneer sold it for only £600, and the difference between the two cases is seen in the judgment of the Master of the Rolls, who said: "In the present case," that is the *Fay Case*, "however, a memorandum was actually signed by the auctioneer, and it is impossible to treat the condition," as to the reserve price, "as applying after that was done." So in the earlier case the unfortunate purchaser was unsuccessful in his action, but in the later one the purchaser recovered damages against the auctioneer. The *Fay Case* will be remembered by conveyancers as having the authority of the Court of Appeal on another point. In order to satisfy the requirements of the Law of Property Act, 1925, s. 40, with respect to a contract for the sale of land, the parties must be "described in such a manner as that there can be no fair or reasonable dispute as to the person who is selling or buying" (*per* Jessel, M.R., in *Potter* v. *Duffield* (1874), L.R. 18 Eq. 4). In the *Fay Case* the conditions of sale stated that the vendor would convey as personal representative. Though the object of this statement was chiefly to define what covenants would be implied in the conveyance, and the name of the vendor was not given in the memorandum of sale, the Court of Appeal have decided that the vendor was sufficiently identified for the purposes of s. 40.

Criminal Law and Practice.

What is a Road?

UNDER s. 1 of the Road Transport Lighting Act, 1927, every vehicle on any road must, during the hours of darkness, carry certain lamps, and it is the duty of any person who causes or permits a vehicle on any road during the hours of darkness to provide the vehicle with lamps in accordance with the requirements of the Act.

Under s. 10, causing or permitting a vehicle to be on any road in contravention of any of the provisions of the Act or of regulations made thereunder is an offence, punishable in a court of summary jurisdiction with a maximum fine of £5, or £20 for a second or subsequent offence.

The word "road" is defined in s. 15 as "any public highway and any other road to which the public has access."

At the hearing of a charge under s. 10 of the Act at Leamington on 24th March, it was argued that the strip of land in question was not a highway and was not a road to which the public had access. The strip of land was at the front of a terrace of six houses called Clarence Terrace, and it was contended that it was not open to the public but only to residents, their friends and guests, and tradespeople. It was not repairable by the corporation, and there were railings at each end. The bench held that it was a road within the meaning of the Act and fined the defendant 10s.

"A road to which the public have access" is at first sight a rather long way of describing a "public road," and if that is so the decision in the case at Leamington cannot be supported. Littledale, J., said, in *The King* v. *Mellor*, 4 B. & Ad. 32, 37: "A road becomes public by reason of a dedication of the right of passage to the public by the owner of the soil, and of an acceptance of the right by the public or the parish."

This dictum, however, must be construed with strict reference to the facts of the case, which arose out of an indictment for the non-repair of a highway. The description "public road" was there used synonymously with the expression "highway."

If, therefore, "a road to which the public have access" were construed synonymously with "highway" those words would be mere surplusage in the definition in s. 15, as a road is there already defined as including a highway.

If the magistrates accepted the evidence that only a limited portion of the public was admitted to the terrace, which was private property, and others could be ejected, they might have dismissed the case, but clearly they came to the conclusion on the facts that the public had access to the land and that a conviction was therefore justified. It could hardly be argued that the land was not a road, which is defined in the Imperial Dictionary as "a means or way of approach or access."

Negligently causing Hurt.

FOR minor offences of carelessness in connection with the handling of motor vehicles, the police not infrequently have resort to s. 78 of the Highway Act, 1835. That section deals, *inter alia*, with an offence which can be committed by the driver of any carriage whatsoever on any part of the highway. The offence is by negligence or wilful misbehaviour causing any hurt or damage to any person, horse, cattle or goods conveyed in any carriage passing or being upon such highway.

This is a useful section, because there are many circumstances which do not amount to careless or dangerous driving, or indeed to driving the carriage at all. It will be observed, however, that the offence must be committed by the driver.

A good example of the type of minor casualty that can be caused by careless handling of a carriage came before the bench at Eastham Petty Sessions on 23rd April, when a charge under s. 78 of the Highway Act, 1835, was heard. The short facts were that the defendant had been stationary in a one-ton Bedford van outside a chemist's shop and had suddenly opened the door on his off-side, knocking down a passing cyclist, who received slight injuries.

It was argued that the defendant had not been in the least degree careless, as before he opened the door he had looked through his driving mirror. On the defendant's own admission, however, his mirror was so placed that he could not see anything approaching within twelve yards immediately behind the centre of the lorry.

The bench pointed out that it was his duty to take the greatest care and that he should have opened the window and put his head out before opening the door. They dismissed the case under the Probation of Offenders Act and ordered the defendant to pay costs.

The position of a driver in such circumstances is so difficult that many courts refuse to convict. The driver's seat may be on the off-side, and it may well be dangerous for the driver to put his head out of the window. It is arguable

that all that he can safely do is to open the door cautiously, keeping one eye on his driving mirror and one on the road. If a vehicle passes on his off-side at a great speed, and allows little or no margin for the driver to open the door, the driver of the passing vehicle may have himself to blame for his consequent injuries.

One more point is important. The clerk of the court stated that the question before the court was not whether the driver of the passing bicycle had been guilty of contributory negligence. The answer to that must emphatically be that the very nature of the offence makes that a relevant question. The offence is " by negligence . . . causing hurt." If it is not the defendant's negligence but another's contributory negligence that causes the hurt, the answer to the charge is, it is submitted, complete.

A Conveyancer's Diary.

The War Damage Act, 1941.—III.

THE payments so far considered are primarily to be financed by a new tax, the War Damage Contribution, levied on virtually all realty, dealt with by ss. 18 to 36, with a few scattered provisions near the end of the Act. The most striking feature of this tax is that it is a *capital* tax (indeed, it was unkindly suggested in Parliament that it was the beginning of the capital levy); it is payable out of capital (s. 82) and is not deductible as an expense for income tax purposes (s. 83). On the other hand, it is leviable by the Commissioners of Inland Revenue, who are to adapt the income tax powers for this purpose (s. 36).

The tax is payable on the first of July in each of the five years beginning with 1941 (s. 20). There is machinery for prolonging the liability if the expense of making payments on account of damage during the risk period is going to be more than twice the amount of tax to be received (s. 22), and one must not forget that the present Act does not attempt to cope with damage inflicted after next 31st August. A generation which is about to celebrate the centenary of the tax imposed for three years by the Income Tax Act, 1842, will therefore hardly take seriously the suggestion that the new tax is likely to cease in just over four years. That, however, is not a subject on which it is necessary to dilate in this column.

The tax is to be levied upon "contributory properties," that is, every property assessed for Sched. A during the risk period, and every property not so assessed which is assessed for rates (s. 19 (1)). The subsection creates a few exceptions which obviously ought to be so excepted, as they are incorporeal and therefore not liable to damage by bombs, such as rent-charges and fisheries. There are also some rather involved provisions about sporting rights (s. 26); and advertisement hoardings are, for no very obvious reason, exempt (s. 19 (1) (i)). But for all practical purposes the charge is on all corporeal realty. And the general rate of charge is two shillings per annum in the £ of the net Sched. A assessment or net annual value for rates, as the case may be (ss. 19 (2) and 20 (3)).

There is, however, a very important and most necessary exception to this general rule, namely, that properties whose value lies in their being open spaces (and which are therefore only slightly vulnerable to bombs) are charged at only sixpence per annum in the £. This exception is created by s. 20 (3).

The less important classes so exempted are as follows: land which throughout the risk period was " used mainly or exclusively for the purpose of open-air games, open-air racing, or open-air recreation (e.g., golf courses, football fields, cricket grounds, horse-race courses, dog-race tracks, and so on); land of no use, or practically no use, except for taking animals, birds or fish for human consumption (e.g., grouse moors); waste land (e.g., Snowdon, Helvellyn and Ben Nevis); sporting rights.

The really large class is that of " agricultural land and agricultural buildings." These terms are defined (s. 95) by reference to the Rating and Valuation (Apportionment) Act, 1928, with an important difference. Section 2 of the 1928 Act defines agricultural land as " any land used as arable, meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one-quarter of an acre used for poultry farming, cottage gardens exceeding one-quarter of an acre, market gardens, nursery grounds, orchards or allotments . . . but . . . not land occupied together with a house as a park, gardens (other than aforesaid), pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse; and for the purpose of this definition the expression ' cottage garden ' means a garden attached to a house used as a dwelling by a person of the labouring classes. ' Agricultural buildings ' means buildings (other than dwelling-houses) occupied together with agricultural land or being or forming part of a market garden and in either case used solely in connection with agricultural operations thereon."

These definitions seem perfectly plain sailing so far as the agricultural land goes and so far as concerns barns, greenhouses, and so on, falling within the 1928 definition of agricultural buildings. The difficulty seems to arise in the extra cases now included in " agricultural buildings " by s. 95 of the 1941 Act. It is there stated that " agricultural building " is to include a " farmhouse occupied in connection with any agricultural land and any agricultural cottage so occupied which is on or contiguous to that land." " Agricultural cottage " is defined, in effect, as a cottage occupied by an employee on agricultural land by virtue of his employment. Now, so far as I can see, there are various possible anomalies here. Two cases of neighbours of my own occur at once to me. One of them is a labourer whose cottage is in the village and is not " on or contiguous to " his employer's land. (" Contiguous " has often been construed by the courts in a restrictive sense as meaning " touching.") This cottage will be charged at the full rate presumably. But if its garden was just over, instead of being just under, a quarter of an acre it would have been " agricultural land " and chargeable at the lower rate. The other case is of smallholders, a father and two sons, who live in modern houses near their holding. There is no definition of " farmhouse," but I hardly think any of their houses could be so described, and they will all therefore be chargeable at the higher rate. Further, it seems to me doubtful what can be meant by cottages " on " agricultural land as defined in the 1928 Act. The conception appears to be much the same as the notorious " open space with buildings on it " vested in the Public Trustee by Pt. V of Sched. I of L.P.A., 1925.

These are, however, not very large points though they may well cause annoyance. The other important feature of the treatment of the classes of land chargeable at the low rate is that in the " open-air sport " category any buildings worth £5,000 or more are to be assessed as separate hereditaments and charged at the higher rate, and so are dwelling-houses on land of the " grouse-moor " category whatever their value (s. 19 (4)).

In discovering whether a hereditament is in any of these special classes, its *normal* use is what is to be considered, notwithstanding any temporary diversion to other uses " by reason of circumstances arising from war " (s. 21).

The next question is how the tax is to be borne. The primary liability (under s. 23) is on the owner of the proprietary interest which carries the right to possession as against other such interests or on the owner of the only proprietary interest, if there is only one. The state of fact for determining this and all other questions of the incidence of any instalment is that existing on the 1st January previous to the 1st July on which the instalment falls due (ss. 20 (2) and 23). And a later change of ownership does not affect the liability for that instalment (s. 35). Here it is necessary to recall the definition of " proprietary interest "; it means a fee simple or any tenancy except one *granted* for less than seven years (s. 95). Thus if I have let my house for a year, I am liable to the Revenue for the instalment. If I have let it for ten years, of which nine have passed, my tenant has the primary liability. In the Act's jargon, he is the " direct contributor." It is provided that references to ownership of proprietary interests concern the ownership of the legal estate (s. 45 (1)), so that if a hereditament is at the relevant date subject to a contract for sale, so that the vendor has the legal estate and the purchaser an equitable fee, the vendor pays the contribution.

Section 24 and Sched. IV construct an elaborate system of indemnities as between landlord and tenant which space does not admit of our discussing here. The point is to spread the contribution over all the interests by reference to an arbitrary, but fair, table. Each of these " indirect contributors " has to indemnify, *pro tanto*, the man next to him nearer the direct contributor. Under s. 34 these provisions operate despite any agreement to the contrary, and a tenant is entitled to enforce any right of indemnity which he may have as against his next lessor by deduction from rent (s. 28).

The other important provision in this category is that under which a certain limited class of mortgagor can deduct a proportion of contribution as against his mortgagee (s. 25).

That section covers only mortgages of dwelling-houses not exceeding £150 a year in annual value or of agricultural property not exceeding £500 a year in value (subs. (4)). It is further limited to mortgages created for the purchase of such property or for the making of improvements to it or mortgages replacing such mortgages (subs. (5)). The provisions about

"substituted mortgages" are necessarily inelegant in their wording, and the adverse comment upon them which has occurred in the press seems hardly justified. Moreover, the idea is to benefit owner-occupiers and not investors, so that none of these rules apply to a mortgage comprising more than one contributory property (subs. (5), proviso). I have received a somewhat strongly worded criticism from a correspondent upon this question of a man with two dwelling-houses in one mortgage, which appears to misconceive the object of these provisions, since a man needs only one house to live in. There are also some rather odd provisions in subs. (6), which seem to be intended to bring up to date the values for the purposes of the section of properties purchased long since. Where the necessary conditions are fulfilled the mortgagor can claim an indemnity against each instalment varying from a sixth to two-thirds according to the relative values of mortgage and the equity of redemption (subs. (1)), and can enforce this indemnity by deduction from his mortgage interest just as a tenant can from his rent (s. 28). And there is the whole point of s. 25 in a nutshell: it is meant to treat as tenants that very large class of persons who are in fact tenants, as having no capital, but are by modern practice mortgagors. If that conception is clear, s. 25 is intelligible and indeed inevitable.

No particular point arises in the internal economy of trusts in connection with the incidence of contribution (except that, as we have seen, the payment is a capital one) as the beneficiaries, other than a Settled Land Act tenant for life, do not have the sort of estates which attract liability. A tenant for life is liable for contributions as having the legal fee simple, but the trustees will, in practice, pay it out of capital.

A very tiresome point still seems to arise between vendor and purchaser, to which I called attention in discussing the Bill, in that contribution is apparently not apportionable. The instalments are liabilities accruing each 1st July by reference to facts existing on the previous 1st of January. They are not, except in a vague way, referable to the risk period, so that a vendor selling to-day after five-sixths of the risk period will only have to pay one lot of contribution. I do not see how the position can be otherwise, as contribution is not like Sched. A or rates, which are definitely paid in respect of a period and are apportionable on general principles accordingly. But the point ought certainly to be covered in a contract of sale in any case where the liability is large enough to matter. It will be even more important after next August when the whole risk period will be past.

Concluding this necessarily incomplete sketch, it remains to say that one may pay contribution in advance under a discount which works out at 2½ per cent. per annum (s. 32); and that there are naturally provisions for stopping the whole of the five years' contributions out of any value payment that may be made (s. 33), with suitable indemnities between such mortgagors and mortgagees as come within s. 25.

I shall endeavour next week to discuss the schemes for chattels, having regard to the two important Board of Trade orders which have now been issued defining much which the Act leaves blank.

Landlord and Tenant Notebook.

Unauthorised Disturbance of Quiet Enjoyment.

I DO not suppose that it has yet occurred to even the most imaginative and sanguine tenant to seek to hold his landlord liable for what is, at present, the most common form of interruption of quiet enjoyment in the literal sense. The principle that the landlord's covenant for quiet enjoyment (in its ordinary form, or when implied) does not extend to disturbance by third parties not claiming under him and whom he has not authorised has been established for centuries, though the factor of authority has not always been stressed as much as it might be. But, even to-day, the application of the principle is not always an easy matter, as witness the successful appeal in *Matania* v. *National Provincial Bank, Ltd.* (1937), 80 SOL. J. 532 (C.A.), to which I will presently revert.

An early example is *Tisdale* v. *Essex* (1614), Hob. 35, in which a tenant, having taken a lease for seven years and entered, was shortly afterwards ejected by a third party. He sued the lessor for breach of covenant for quiet enjoyment. The court, after referring to sundry passages in the Year Books, held as follows: "The law shall never judge, that I covenant against the wrongful action of strangers, except my covenant express to that purpose" and went on to declare "for the law it self doth defend every man against wrong." The second part of this statement makes it clear that "wrongful" in the first means "unlawful"; but I think the position is better expressed by saying that the scope of the covenant for quiet enjoyment is limited to acts lawful in themselves which have been authorised by the lessor. And, as the statement stands, it rather ignores the circumstance that to establish a *prima facie* case the tenant must show that the "stranger" claims under the landlord. (The facts of the case as reported give no indication either way.) Thus, a tenant complaining of disturbance by the attentions of the *Luftwaffe* would fail because it could not be suggested that the disturbers claimed under the landlord; if they did, it would be difficult for the landlord to show that the tenant had a legal remedy, but he might well establish that he had never authorised the acts constituting the disturbance.

The true position is succinctly set forth in the course of the judgment of Fry, L.J., in *Sanderson* v. *Mayor of Berwick-on-Tweed* (1884), 13 Q.B.D. 547 (C.A.), though that case is better known as authority for the proposition that the disturbance need not affect title, or even possession, for the covenant to apply.

The facts were that the defendants let a farm to one C, the farm being part of enclosed moorland which had been drained. The lease specified "waters and watercourses," and thus authorised the tenant to discharge water from his land through drains which entered and passed through other parts of the enclosed moor. A few years later the defendants let an adjacent farm to the plaintiff. In the action for breach of covenant for quiet enjoyment he complained of the flooding of two fields. It was found that in the one case the trouble was due to excessive user by C of part of the system; in the other, to the improper construction of drains properly used by C. A distinction was drawn accordingly. In the one case "if the system was inadequate for the needs of the farm C should either have done the additional work himself, or have required his landlords, the defendants, to do them"; his lease "appears to us not to have conferred any right to use the drains in his own land for the purpose of causing on his own land an accumulation of water which should overflow on to the adjoining lands of the plaintiff." But in the case of the other field "in respect of this proper user C appears to us to have lawfully claimed under the defendants by virtue of his lease, and to have acted *under the authority conferred* on him by the defendants. The injury caused to the field appears to us to have been . . . a substantial interruption by C, who is a person lawfully claiming through the defendants . . ."

This puts the matter in a nutshell, but, still, difficulties may arise when one has to examine whether a lease "authorises" an act or not. A few years later, *Harrison, Ainslie & Co.* v. *Muncaster* [1891] 2 Q.B. 680 (C.A.), showed that the interruption, to be actionable, must be something which could reasonably have been foreseen; put in other words, this means that a third party is not authorised to do what no one would contemplate happening. In this case the defendant let adjoining mines to P and the plaintiffs respectively; normal working by P resulted in water, the presence of which no one had suspected, overflowing and flooding the plaintiff's mine. Citing the judgment in the last-mentioned case, Lord Esher, M.R., after reading a passage, running "And where the ordinary and lawful enjoyment of the demised land is substantially interfered with by the acts of the lessor or those lawfully claiming under him," said, "I pause there for a moment. Not only must the enjoyment be interrupted, it must be interrupted by the acts of the lessor, or those lawfully claiming under him: the last words require some definition *and limitation*." And the learned Master of the Rolls supplied the deficiency in this way: "By the acts of the lessor, or of those claiming under him *the right to do the acts which caused the interruption*."

This was, it transpired, the vital consideration in *Matania* v. *National Provincial Bank, Ltd.* (1937), 80 SOL. J. 532 (C.A.). The plaintiff in that case, a teacher of singing, took a lease of the third and fourth floors of a building from the defendants, and with their consent as required by his lease, and the consent of the ground landlords as required by the head lease, he effected substantial alterations on the third floor. Then another tenant took the first floor for the purposes of a reading-room, which necessitated equally substantial alterations; and the defendants obtained the ground landlord's consent subject to other tenants agreeing; and, fortunately for the defendants (though at first instance the fact was considered unimportant) they passed this on, condition and all, to the new tenants: "subject to consent being obtained of all lessees" were the vital words in the document expressing their own consent. No one sought the plaintiff's consent. It followed, Slesser, L.J., put it, that "the new tenants must, *quoad* the bank, be regarded as persons who have done unlawful acts on these premises without authority, and for that the bank cannot be made liable under their covenant, because it is *not a lawful interference* with the quiet enjoyment for which the bank is responsible, and it is done *without their authority*."

Our County Court Letter.

Damage to Boy's Teeth.

In *Warren* v. *Joseph Hitchman & Sons*, recently heard at Birmingham County Court, the claim was for £100, as damages for negligence. The plaintiff was a boy, aged four years, and his case was that, while playing in the yard at his home, he was struck in the mouth by a brick dropped from the hand of one of the defendants' bricklayers. The result was that the plaintiff was left with a scar, and had lost four teeth. The defence was a denial of negligence, and it was pointed out that the workmen were doing guttering, and were not using bricks. A brick might have become detached in some way, by reason of an accident for which the defendants were not responsible. His Honour Judge Dale accepted the plaintiff's evidence that the brick fell from the workman's hand. The claim was inflated in amount, as this worked out at £25 a tooth, as against 6d. in most people's experience. There was no substantial disfigurement, and judgment was given for £10 general damages and £2 10s. special damage, with costs.

The Definition of a Down-Calving Heifer.

In *Thompson* v. *Spence*, recently heard at Ashby-de-la-Zouch County Court, the claim was for £26 4s. as damages for breach of warranty. The plaintiff's case was that he had bought two down-calving heifers at the Market Bosworth May Fair for £28 10s. and £32 respectively. The next day the better beast calved, and on the 10th May (two days later) the cheaper beast calved prematurely. It was subsequently sold for £9 5s., as the defendant refused to take it back. The calf was born dead, and expert evidence was that it was an abortive calf, born at seven months, viz., two months prematurely. The defendant's case was that the calf was a full-time calf, although it had not lived. The next day the heifer was able to suckle another calf, which would be unusual after having had an abortive calf at seven months. His Honour Judge Galbraith, K.C., observed that the defendant was a man of the highest reputation, and had honestly believed that the calf was full-time. Judgment was given, however, for the plaintiff, with costs.

Decisions under the Workmen's Compensation Acts.

Partial Incapacity from Strain.

In *Hughes* v. *The Corporation of Trinity House*, at Bangor County Court, the applicant had been a fog signal driver on Bardsey Island. In December, 1936, he sustained a strain, which caused a partial dislocation of the fifth lumbar vertebræ. Compensation was paid at the rate of 29s. 9d. a week, but in September, 1937, the applicant was certified as incapable of discharging the duties of a fog signal driver. The respondents accordingly terminated his services by a month's notice, and awarded him a gratuity of £69 7s. 9d. From the 18th October, 1937, the compensation was reduced to 28s. 7d., a deduction having been made representing the weekly value of the gratuity. Payments of 28s. 7d. continued until the 20th April, 1938, when the applicant became a driver-salesman to a grocery company. His wages were 45s. a week, and compensation was then reduced to 8s. 1d. a week for a month. On the 20th May, 1938, a notice to terminate was given under the Workmen's Compensation Act, 1925, s. 12 (1), on the ground that the applicant had returned to work. The applicant's case was, however, that he was still partially incapacitated when he became a van driver. The respondents contended that the incapacity had ceased. His Honour Deputy Judge Glanville Morris held that the applicant had done his best and was eager to do any work. An award was made of 12s. 4d. a week and continuing, and also for the arrears from May, 1938, to December, 1940, viz., £65 5s. 7d., with costs.

Lump Sum for Thumb Injury.

In *Jackson* v. *Welby Estates, Ltd.*, at Grantham County Court, the applicant was an apprentice-joiner, and on the 20th November, 1939, he had had an accident with a circular saw. Half of the right thumb was lost and the index and next finger were injured. Compensation was duly paid and work was resumed on the 3rd July, 1940. An offer of £60 in full settlement had been refused, as the applicant could not quite bring his thumb to the palm of his hand. The respondents accordingly offered £100, which was agreeable to the applicant's father, whose evidence was that, given a reasonably secure job, the applicant had a chance of becoming a master joiner. His Honour Judge Langman ordered the agreement to be recorded.

To-day and Yesterday.

Legal Calendar.

28 April.—One of the sensations of 1845 was the murder at Hampstead, then a hamlet, of which James Delarue, a professor of music, was the victim. He had been found with his head smashed on a footpath leading from Chalk Farm to Belsize Park, and eventually a young man called Thomas Hocker was found guilty of the crime. Between his conviction and his execution at the Old Bailey on the 28th April he displayed extraordinary audacity, raising very ingenious doubts as to the justice of his sentence and several times sending the officers of justice on vain searches by pretended revelations. But on the fatal morning, when the bell of St. Paul's struck eight with solemn distinctness, he fainted and had to be carried in a chair into the open air. After restoratives had been applied he was taken to the scaffold in such a state of prostration that he had to be supported by the executioner's assistant while the last preparations were made.

29 April.—On the 29th April, 1696, Brigadier Rookwood and two others were executed at Tyburn for their part in the great plot to assassinate William III. The idea was to kill him while he was hunting in Richmond Park, but for some reason he did not go and the scheme was postponed, only to be betrayed. Rookwood at the gallows handed a paper to the sheriff excusing himself for his part in the matter on the ground that he was only obeying the order of his superior officer. He had a high reputation for courage and honour.

30 April.—On the 30th April, 1795, The Rev. William Jackson, convicted of high treason, was brought to the Court of King's Bench in Dublin for sentence. As he was being driven there he was seen to be leaning out of the coach window vomiting violently. In the dock he beckoned his counsel, and making an effort to squeeze his hand, whispered with a smile of mournful triumph a quotation from "Venice Preserved": "We have deceived the senate." He had taken poison. While a point of law was being argued he became steadily worse; a dense steam ascended from his head and his face was convulsed while his eyes had the glare of death in them. With a last effort he stood totteringly erect with folded arms and an expression of composure. Finally he collapsed and an apothecary who happened to be in the jury box pronounced him dying. He expired there.

1 May.—Lord Macclesfield, formerly Lord Chancellor, died in 1732, and when the surgeon opened his body on the 1st May he found three large stones in the bladder and several in the kidneys. He had been taken ill at his son's house in Soho Square and had foretold that as his mother had died on the eighth day of her final illness so would he. He lingered that period in violent pain and at the last when they told him that his physician had gone for the night, he said: "And I am going also, but I will close my eyelids myself." With that he expired.

2 May.—On the 2nd May, 1582, Serjeant Anderson was appointed Chief Justice of the Common Pleas in place of Sir James Dyer who had died. He had pursued his profession with devotion and industry and he possessed an extensive knowledge of law which he could readily apply. Though in civil cases he was patient and impartial, he shared to the full the brutality which marked the state trials of the reign of Elizabeth. He filled his office for more than twenty-three years until his death in 1605.

3 May.—On the 3rd May, 1836, James Stirling, the son of a Presbyterian minister, was born at Aberdeen.

4 May.—On the 4th May, 1802, Lord Redesdale, newly appointed Lord Chancellor of Ireland, wrote to Lord Eldon: "I have been principally engaged in eating and drinking. To-morrow I sit for the first time. Lord Kilwarden is a sensible man but I think not strong. Lord Norbury . . . I like, though he is not high as a lawyer. Mr. O'Grady is a pleasant young man. Mr. Saurin sensible, but, I think, discontented. The rest are not of much importance." So the principal figures in the Irish legal world appeared to an English stranger. The entertainments which inaugurated his tenure of the Great Seal left on his mind the impression that the Irish were "a pleasant though not very comprehensible race possessing at a dinner table much more good fellowship than special pleading." Of the men he mentions, Lord Kilwarden, Chief Justice of the King's Bench, was murdered by mistake in the following year during Emmett's rising. Lord Norbury, Chief Justice of the Common Pleas, was a wit but no lawyer, whose drollery alternated between the fantastic and the grim.

The Week's Personality.

Of the law reporters who have attained judicial distinction James Stirling is one of the most remarkable. He was the

eldest son of the minister of the George Street United Presbyterian Church at Aberdeen. He went first to the university of his native city and afterwards to Cambridge, where he was senior wrangler. Having been called to the Bar at Lincoln's Inn, he joined the staff of the short-lived *New Reports* and afterwards worked for the *Law Reports* at the same time acquiring a considerable practice at the Bar. Though hardworking and learned, he was hampered by a diffident distrust of his own powers, and it was said that his opinion was the best in Lincoln's Inn if you could only get it. In 1881 he succeeded John Rigby as Attorney-General's "devil" and five years later, when Sir John Pearson died, he was appointed to the vacant Chancery judgeship. His decisions were exceedingly sound and were rarely reversed, but his painstaking care caused him to be criticised for the slowness of his methods. In 1900 he was promoted to the Court of Appeal, but here again his diffidence sometimes made him too ready to defer to colleagues whose opinion was not always so good as his own. He retired in 1900 and till his death ten years later he spent most of his time at his house in Kent, taking no further part in legal affairs.

FIRE IN GRAY'S INN.

In the great air raid of a fortnight ago the squares of Gray's Inn were badly damaged by fire. The outbreaks in their concentration did as much damage as was suffered in the three disastrous conflagrations which succeeded one another between 1680 and 1687. In those days what is now Gray's Inn Square was divided into Coney Court on the north and Chapel Court on the south. The 1680 fire broke out in the south-west corner of the former and spread northwards, causing devastation which necessitated extensive rebuilding. Four years later another fire broke out in Bacon's Buildings at the west end of Chapel Court on the site of No. 1, Gray's Inn Square. The place caught fire at about 6 o'clock one January morning, and "it burnt very furiously being so dry a season that no water was to be had in a long while; it consumed two or three whole staircases but at last by blowing up and the engines it was happily extinguished. There were three persons killed at it and three or four gentlemen of the House had all their goods and books burnt." Historically the thing was a catastrophe, for on the first floor was the Library of the Society and the rooms which had been Bacon's Reader's Chamber. Though some books were saved, the earlier records of the Inn perished. Finally in 1687 a building on the east side of Holborn Court (now South Square) caught fire about one in the morning in the midst of a revel held by the Society, when the Hall doorkeeper suddenly saw flames bursting out of the windows of the chambers of a Mr. Rowney. The conflagration continued for about five hours and consumed five staircases.

FORMER COSTS.

The Pension Book throws an interesting light on the fire-fighting methods of the time. The Society had its own engine, but that was, of course, inadequate, and it was ordered "that there be paid to the Captain of the Insurance men five and twenty shillings and to each of his followers 10s. each . . . To the engine in Holborn Court which continued last £4. And for the other engine in Holborn Court £3. For the two engines in Gray's Inn Lane 40s. a piece. To the gentlemen of His Majesty's Guards who attended my Lord Craven five pound and what more Mr. Treasurer pleases not exceeding ten pound." The next notable fire was in 1717, when No. 3 Coney Court was destroyed at about 3 o'clock in the morning. The Benchers authorised payment of the following rewards: "To Mr. Hind's engine, engineer and followers £3 4s. 6d. To St. Andrew's engine, engineer and followers £1 0s. 0d. To St. Giles' engine, engineer and followers £1 0s. 0d. To Mr. William Brownjohn's hand engine and his servants 15s. To the firemen of the two Insurance Offices, viz., the Sun Fire Office and the Hand in Hand Fire Office to them and their followers £4 0s. 0d. To several who assisted at the fire the sum of £10 14s. 0d. (82 persons at 2s. 6d. each; 6 boys at 1s. 6d. each)."

Obituary.

MR. L. H. EDMUNDS, K.C.

Mr. Lewis Humfrey Edmunds, K.C., barrister-at-law, died on Sunday, 27th April, at the age of eighty-one. He was called to the Bar by the Inner Temple in 1884, and in 1895 he took silk. He was a considerable authority on patent law, and the author of several well-known works on the subject, among them "Law and Practice of Letters-Patent for Inventions," "Copyright in Designs," "Patent Designs and Trade Marks Acts Consolidated."

Practice Notes.

Production contrary to Public Interest.

Duncan v. *Cammell Laird & Co., Ltd.* (1941), 1 All E.R. 437, contains a useful statement and critique of the rule that—

> "It is the practice of the English courts to accept the statement of one of His Majesty's Ministers that production of a particular document would be against the public interest, even though the court may doubt whether any harm would be done by producing it": *per* Scrutton, L.J., in *Ankin* v. *London & North Eastern Rly. Co.* [1930] 1 K.B. 527, 533.

In the present case, Goddard, L.J., observed that whether or not there are any exceptions to that rule was not clear; so far as the Court of Appeal was concerned, the rule was binding (at p. 440. *ibid.*). An authoritative and final decision by the House of Lords was desirable, and leave to appeal was granted.

The action was to recover damages for the loss of life of some of the victims of "The Thetis." In the course of the affidavit of documents, the company objected to producing certain documents acquired and held by them under the directions of the First Lord of the Admiralty. The Treasury Solicitor directed the company not to produce the documents on the ground that they were privileged, and to object to production except under orders of the court.

The First Lord of the Admiralty swore an affidavit objecting to the production of the documents, and saying that all had been considered by him with the assistance of his technical advisers and that he had formed the opinion that disclosure would be injurious to the public interest. An application by the plaintiffs to inspect and take copies of the documents was refused by the master, and Hilbery, J.; the decision was upheld on appeal.

It was argued for the appellants that the court should itself look at the documents and decide whether the claim of privilege was justified. Had the First Lord "exercised his mind upon them," or had he taken advice "in a general way"? The plaintiff's case rested upon the documents, and the condition of the ship. Moreover, extracts from the documents had already been published and no danger could ensue.

The respondents maintained that if a responsible Minister told the court that "in the public interest, a document should not be produced, that is an end of the matter": hardship or the nature of the documents was irrelevant.

MacKinnon, L.J., said that the rule was settled in *Beatson* v. *Skene* (1860), 5 H. & N. 538, and "very notably," in *Ankin's Case*, *supra*, citing Scrutton, L.J.'s dictum. Scrutton, L.J., had there observed that the practice in Scotland was different: "there the judge looks at the document and orders it to be produced if he does not agree with the Minister's reasons for considering its production to be against the public interest." It appears, however, from dicta in subsequent cases that upon the practice in Scotland, Scrutton, L.J., was "under some misapprehension." (See *Admiralty Lords Commissioners* v. *Aberdeen Steam Co., Ltd.* [1909] S.C. 335.)

No order for production should, accordingly, be made; nor was the court entitled to see the documents to exercise its opinion whether or not the documents should be produced. Theoretically, said MacKinnon, L.J., the court has that power, but only rarely—in a "very special case," as *Robinson* v. *South Australia State* (*No.* 2) [1931] A.C. 704—was that power exercised. In that case MacKinnon, L.J., pointed out three "exceptional reasons": the State itself was the defendant; the action was an ordinary claim arising out of the trading activities of the State; and the claim for privilege was not made under oath or in due form.

But, with respect, is this distinction sound? Does it make any difference in principle whether the State is defendant or not? If privilege is claimed on the ground that production of a document is injurious to the public interest, does it matter whether the State is plaintiff or defendant—or a party to the action at all? Even if the case is one where the State has been exercising a commercial activity, public interests may yet be concerned. Finally, it is opined that if, perchance, a claim of privilege has not been made in due form, that can be remedied.

It is respectfully submitted that the court has power to inspect the documents in order to see whether the privilege is rightly claimed, and that this power is not confined to exceptional cases. If this were not so, it would mean that a Minister of the Crown, upon general notice merely, might claim and obtain privilege.

Goddard, L.J., thought that the matter should be settled by the House of Lords. The learned lord justice—one infers from his observations—thought that the rule whereby the court must give effect to the claim by the head of a department

for privilege, might, possibly, have exceptions. A Minister should not be cross-examined as to the ground on which he claims protection: "I think that the cases show that, if the objection is taken by the Minister, that objection, so far as the court is concerned, is official, and cannot be inquired into" (at p. 441, *ibid.*).

du Parcq, L.J., said that difficult cases may arise where the Crown or department is a litigant, e.g., where a department sues and refuses to produce documents "apparently material." In the present case, however, there was no question of the privilege of the parties. It was true that by Ord. XXXI, r. 19 (*a*) (2), on an application for an order for inspection, where privilege is claimed, the court or judge may inspect the document to decide the validity of the claim. The learned lord justice doubted, however, whether, in the present case, a refusal to produce was a claim of privilege. If, however, the present case did come within that rule—

> "Where the Crown is in no sense a party, and where a responsible Minister of the Crown or head of a department states on oath that the production by one of the litigants of a document would be injurious to the public interest, there can be very few cases in which it would be the proper exercise of the judge's discretion for him to look at the document and decide himself whether or not it ought to be produced, or, in other words, decide, on what must necessarily be very inadequate evidence, whether or not the Minister of the Crown was right in the conclusion at which he had arrived on a matter as to which the Minister is above all people responsible" (at p. 442, *ibid.*).

Parliamentary News.

Progress of Bills.

House of Lords.

Justices (Supplemental List) Bill [H.L.].
Read Second Time. [29th April.

National Loans Bill [H.C.].
Read First Time. [29th April.

Temporary Migration of Children (Guardianship) Bill [H.L.].
Read First Time. [23rd April.

House of Commons.

Liabilities (War-Time Adjustment) Bill [H.L.].
In Committee. [24th April.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in The Solicitors' Journal *from the 16th September, 1939, to the 26th April, 1941.)*

Statutory Rules and Orders, 1941.

E.P. 529. **Acquisition of Securities** (No. 3) Order, April 19.
No. 525. **Byssinosis** (Benefit) Scheme, April 14.
No. 527. Byssinosis (Fees) Regulations, April 14.
No. 526. Byssinosis (Workmen's Compensation) Scheme, April 14.
E.P. 538 **Civil Defence Duties** (Compulsory Enrolment) (City of London) Order, April 17.
No. 513. **Coal Mines** (Condox and Hydrox) Order, April 9.
No. 528. **Control of Paper** (No. 32) Order, April 16.
No. 523. **Export of Goods** (Control) (No. 16) Order, April 16.
No. 549. **Foreign Representatives** (Administration of Oaths) Order, April 16.
No. 226. **Personal Injuries** (Civilians) Scheme, April 10.
E.P. 519/S.17. **Police (Scotland)** (Employment and Offences) Order, April 1.
No. 514. **Public Service Vehicles** (Conditions of Fitness) Regulations, April 3.
No. 539. **Purchase Tax** Regulations, April 16.
No. 504. **Safeguarding of Industries** (Exemption) No. 2 Order, April 9.
E.P. 547. **Sale of Food** (Public Air-Raid Shelters) Order, 1940. Directions, April 19.
No. 497/L6. **Supreme Court Rules** (No. 1), April 8.
No. 543. **Trading with the Enemy** (Specified Areas) (No. 4) Order, April 18.
E.P. 518/S.16. **War Zone Courts** (Constitution) (Scotland) Order, April 11.

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Notes of Cases.

COURT OF APPEAL.

Metropolitan Real and General Property Trust, Ltd. *v.* Slaters and Bodega, Ltd.
Regal Property Trust, Ltd. *v.* Same.
Freehold and Leasehold Investment Co., Ltd. *v.* Same.

Greene, M.R., Clauson and Goddard, L.JJ.
17th December, 1940.

Emergency legislation—Judgment for money—Creditor given leave to proceed—Debtor given leave to appeal—Necessity for granting stay of execution—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (1).

Appeals from decisions of Wrottesley, J., in chambers.

The plaintiffs in the first action brought an action against the defendants claiming £200 for rent of premises in London. The defendants carried on a business of caterers and restaurant proprietors which had been adversely affected by the war. The master gave the plaintiffs leave under R.S.C. Ord. XIV to sign final judgment for the sum indorsed on the writ, and directed that they should be at liberty to issue execution or otherwise proceed to the enforcement of the judgment under s. 1 of the Courts (Emergency Powers) Act, 1939. Accepting the defendants' evidence that they were only in a position to pay 25 per cent. of the rent due, he suspended the leave to proceed subject to the observance of certain conditions with regard to accounts and payments. On appeal by the plaintiffs, Wrottesley, J., reversing the master's order, gave them unconditional leave to proceed to enforce the judgment by execution or otherwise. He granted the defendants leave to appeal from his decision, but did not order a stay of execution. The defendants, in appealing, asked that the master's order should be restored, or that the plaintiffs should be permitted to enforce the judgment subject to such conditions as the Court of Appeal might think proper. Between the date of Wrottesley, J.'s order and the hearing of the appeal the defendants paid the sum claimed.

The facts in the second and third actions were similar.

Greene, M.R., said that the case might afford the defendants a useful guide if circumstances should again compel them to seek relief under the Act of 1939. Without expressing any opinion on the question of other cases, which he had not considered, he would say generally with regard to applications under the Act that in the case of judgments for money, where leave was given to the debtor to appeal, it should follow, as a matter of course, and should be expressly stated in the order, that there was to be a stay of execution pending the appeal. If that were not given the debtor was under compulsion to pay; and, once he had paid, the judgment was satisfied, and the substratum of his case on appeal was irretrievably destroyed. Where, therefore, leave to appeal was given to the debtor, he should automatically have a stay of execution so that his appeal might be determined when it came into court.

Clauson and Goddard, L.JJ., agreed.

Counsel: *Devlin*; *Fortune* (first and third plaintiffs); *Diamond*.

Solicitors: *Clifford Turner & Co.*; *Bradshaw, Wright & Sloman*; *Hicks, Arnold & Bender*; *Lewis & Sons*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Horn *v.* Sunderland Corporation.

Atkinson, J. 19th December, 1940.
Greene, M.R., Scott and Goddard, L.JJ.
24th March, 1941.

Compulsory acquisition of land—Purchase of farm land for building purposes—Value as building land paid as compensation—Whether owner entitled also to compensation for disturbance of business—Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 *Geo.* 5, *c.* 57), *s.* 2 (2) (6).

Case stated by an Official Arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.

The appellant, Horn, claimed compensation for the acquisition by Sunderland Corporation of his interest in land known as Springwell Farm, of some 102 acres, in pursuance of the Sunderland (Durham Road) Housing Confirmation Order, 1936. The arbitrator by his award assessed the compensation payable to the claimant at £22,700, but stated that that sum did not include any sum as compensation for the disturbance of his business by reason of his being dispossessed of the land. The arbitrator stated that he found as a fact that the £22,700 could not be realised by a willing seller in the open market unless vacant possession were given to the purchaser for the purpose of developing the land for building. The claimant accordingly applied that the award might be set aside principally on the ground that it was an error in law not to include in the compensation any sum for the loss due to the disturbance of the business which he carried on on the land. By s. 2 of the Act of 1919, "In assessing compensation, an official arbitrator shall act in accordance with the following rules . . . (2) The value of the land shall . . . be taken

to be the amount which the land if sold in the open market by a willing seller might be expected to realise . . . (6) . . . rule (2) shall not affect the assessment of compensation for disturbance . . ."

ATKINSON, J., said that it had been argued for the corporation that the claimant could not have realised the value of the land, have sold it at the figure awarded, without suffering disturbance of his business, and that to give, in addition to the value of the land, compensation for disturbance would be to place him in a better position than that in which he would have been had he sold voluntarily. In his (his lordship's) opinion, there was no reason why the Legislature should not have intended to do that. In one case the sale suited the owner; in the other it did not. The Act did not, as it could easily have done, provide that compensation was to be such as to place the owner in the position in which he would have been had he sold voluntarily. Rules (2) and (6) appeared to say that the mere fact that the value had been given on the basis indicated was not to prevent a claim for compensation for disturbance of a business. The corporation admitted that if the claimant had been awarded only the agricultural value of the land he would receive in addition compensation for disturbance. Why, however, on the corporation's own argument, should it not be excluded also in such a case? For the agricultural value also could only be realised by giving vacant possession. And why should not the same argument exclude compensation for damage due to severance which, however, the corporation admitted to be recoverable although the full selling value of the land was awarded? There was no reason why the corporation's argument should prevail just because the land had a building value. Rule (6) had been introduced to make it quite clear that the mere fact that a claimant was receiving the market value under r. (2) showed that he also retained his right to be compensated for disturbance of his business. No other view would probably have been suggested but for *Mizen Bros.* v. *Mitcham Urban District Council* (1929), unreported. If that decision was, as it appeared to be from "Cripps on Compensation" (8th ed., at p. 271), merely that, when land was sold for its full building value, the owner could not claim also the cost of clearing it, it did not touch the larger question whether the dispossessed owner was entitled to compensation for the expense of establishing his business elsewhere. The case must be remitted to the arbitrator with the direction that he assess the loss to the claimant by disturbance of his business.

The corporation appealed. Atkinson, J., having decided in favour of the corporation on the claimant's other objections to the award, the claimant cross-appealed. (*Cur. adv. vult.*)

GREENE, M.R., said that the case raised a point of some nicety. The basic argument advanced for the corporation was that which had been accepted by the Divisional Court in *Mizen Bros.* v. *Mitcham Urban District Council* (1929), unreported, namely that the claimant was not entitled to combine in the same claim a valuation of his land on the footing of an immediate sale for building purposes with vacant possession, and a claim for disturbance and consequential damage on the footing of interference with a continuing business on the land. The argument for the claimant that under the Act of 1919 the value of the land and compensation for disturbance must be considered in separate watertight compartments, in respect of each of which the landowner was entitled as a matter of law to have a sum awarded for compensation, was incorrect under the law as it stood before the Act of 1919, and r. (6) did not confer a right to claim compensation for disturbance; it merely left unaffected the right which the owner would, before the Act of 1919, have had in a proper case to claim that the compensation should be increased because he had been disturbed. True, the official arbitrator could not now well avoid arriving at one figure for the value of the land and (in a proper case) another figure for disturbance; but those figures were still merely the elements which went to build up the global figure of price or compensation payable. It was a mistake to construe rr. (2) and (6) as though they conferred two separate and independent rights. The claimant, in farming the land, was putting it to a use which, economically speaking, was not its best use. The result of the compulsory purchase would be to give him a sum equal to the true economic value of the land. His claims for the value of the land as building land and for compensation for the disturbance of his business were inconsistent with one another. He could only realise the building value of the land if willing to abandon his farming business; but he was saying that he was not willing to abandon it, and ought to be treated as one who, but for the compulsory purchase, would have continued to farm the land. He was, however, only disentitled to an award for disturbance if the £22,700 equalled or exceeded the value of the land as farm-land, plus the loss by disturbance and whatever value should be attributed to the minerals. If the sum of those figures exceeded £22,700, compensation for disturbance should be awarded. The matter would be remitted to the arbitrator with a direction (1) to ascertain (*a*) the value of the land as agricultural land with the minerals in it, and (*b*) damages for disturbance; (2) if the sum of those two items exceeded £22,700, to award an additional sum equal to the excess; and (3) to deal with the costs of the further proceedings before him.

SCOTT, L.J., agreed.

GODDARD, L.J., dissenting, having referred to the Lands Clauses Act, 1845, and to *Inland Revenue Commrs.* v. *Glasgow and South Western Railway Co.*, 12 App. Cas. 315, said that it would be seen that, while disturbance, which included loss of business, was not mentioned *eo nomine* in the Act, it was a very real element to be taken into account in determining what the owner was to receive by way of compensation. The right to compensation for that disturbance was provided by the Act of 1919. It seemed to him that while rr. (1) and (2) required that, in assessing the actual value of the land, the owner was to be regarded as a willing seller, r. (6) recognised that in fact he was not. Where an owner was expelled from his house, the expense to which he was put for removal was in no way connected with the value of his house. He (his lordship) could not see why the claimant should not receive compensation for disturbance when it was admitted on behalf of the corporation that he would have been entitled to it if the sum awarded had been the value of the land as agricultural land. He thought that Atkinson, J.'s reasoning was quite unassailable, and that to hold the contrary would be to ignore r. (6) entirely.

COUNSEL: *Beyfus*, K.C., and *Charlesworth*; *Squibb*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *The Town Clerk, Sunderland*; *Maples, Teesdale & Co.*, for *Steel, Maitland & Byers*, Sunderland.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Fay *v.* Miller, Wilkins & Co.

Greene, M.R., Clauson and du Parcq, L.JJ.
8th April, 1941.

Vendor and purchaser—Sale by auction—Conditions provide that "the vendor will convey as personal representative"—Whether vendor sufficiently identified—Law of Property Act, 1925 (15 *Geo.* 5, *c.* 20), *s.* 40.

Appeal from Bennett, J.

In this action the plaintiff as purchaser claimed specific performance of an agreement for the sale of a dwelling-house and damages for breach of warranty of authority. The action was brought in the following circumstances: Mrs. H, as personal representative of the deceased owner, was in a position to sell the dwelling-house. She instructed the respondents, a firm of auctioneers, to put up the house for sale with a reserve price of £750. The house was accordingly put up for sale and the respondents knocked the house down to the purchaser for £600 and signed a memorandum of sale to her at that price. The vendor refused to complete. The purchaser sued the vendor for specific performance, and the respondents, the auctioneers, for damages for breach of warranty. The special conditions of sale contained nothing identifying the vendor beyond special condition 4, which provided that "the vendor will convey as personal representative." The contract showed a space for the insertion of the vendor's name; none, however, had been inserted. Bennett, J., held that the auctioneers only had authority to sell at £750 or some higher figure. He refused, however, to award damages, as he held that there was no sufficient memorandum in writing of the contract to satisfy the provisions of s. 40 of the Law of Property Act, 1925. The purchaser appealed.

GREENE, M.R., said that the contract which the auctioneers purported to make with the purchaser was not binding on the vendor, as it was not within their actual or ostensible authority. Bennett, J., had held that the words "the vendor will convey as personal representative" were not sufficient to identify the vendor and satisfy the requirements of s. 40, they being not inserted for the purpose of identifying the vendor but for the purpose of the conveyance. That was too narrow a view. The question was not what was the intention with which the words were used but what on a fair construction did they mean. If they were sufficient to lead the inquirer to the actual vendor that was enough, even though, as in the case of the word "proprietor," considerable research might be required. The words meant in the first place that the vendor would convey as personal representative of the deceased person so as to bring into effect the provisions of s. 76 (1) (*f*) of the Law of Property Act, 1925, which limit the vendor's covenants for title. This meant that at the date of the conveyance the vendor would be a person who would be properly described as the personal representative of a deceased person and that she would convey under that description and in that capacity. That was enough. In "Fry on Specific Performance" (1881 ed., para. 331, p. 148) it was stated that is sufficient if the vendor was described as mortgagee, executor or trustee. This paragraph had appeared in all subsequent editions and the practice of conveyancers must have been based upon it. It would not be right to disturb practice of such long standing. It followed that the auctioneers were liable for breach of an implied warranty of authority, and the appeal must be allowed.

CLAUSON and DU PARCQ, L.JJ., delivered judgments to similar effect.

COUNSEL: *Pennycuick*; *Buckley*.

SOLICITORS: *Pinsent & Co.*, for *F. B. Jevons & Riley*, Tonbridge; *W. A. G. Davidson & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Cooper *v.* Jax Stores, Ltd.

Greene, M.R., MacKinnon and Goddard, L.JJ.
21st March, 1941.

Landlord and tenant—Emergency legislation—Notice of disclaimer of lease on account of war damage—Notice to avoid disclaimer—Permissible application to court by landlord—Landlord and Tenant (War Damage) Act, 1939 (2 & 3 *Geo.* 6, *c.* 72), *ss.* 6 *and* 11.

Respondent's appeal from an order made by His Honour Judge Ralph Thomas, at the Mayor's and City of London Court, on 30th January, 1941, whereby he ordered that a certain amendment should be allowed to be made of a notice of application for an order under s. 11 (1) (*c*) of the Landlord and Tenant (War Damage) Act, 1939, that certain premises were capable of beneficial occupation and that rent should be payable by the respondents in respect thereof. The amendment permitted by the order was that the words "section 6" should be substituted for "section 11," and that the substance of the application should be altered to "that the notice of disclaimer is of no effect on the ground that the land comprised in the lease was not unfit by reason of war damage at the time when the notice was served." The premises in question were damaged twice. On 2nd November, 1940, the tenants served a notice of disclaimer, and on 29th November the landlord served a notice to avoid disclaimer.

GREENE, M.R., said that in fact this was not an amendment at all, but the abandonment of one claim and the substitution of another. Counsel for the tenant did not take this point, nor did he take the point that the application under s. 6 could not be entertained by the county court judge as a matter of jurisdiction, by reason of the time limit of one month imposed by s. 6. In so far as the parties were able to do so, they conferred jurisdiction upon the judge by consent. His lordship could not, apart from general grounds, see how a consensual jurisdiction could be conferred, in view of the language of subs. (5), which contained a peremptory direction that the land should be treated, for the purpose of any proceedings pursuant to the notice, as having been made unfit by reason of war damage at the time of the service of the notice of disclaimer, unless the court decided on an application under the section—that is, an application within a month—that a notice of disclaimer was of no effect. His lordship did not, however, express any concluded opinion on the matter since in the court below there was no objection to this so-called amendment. It was not necessary to go further into the question as there were other grounds of substance leading to the success of the appeal. The effect of serving the notice to avoid disclaimer was, as laid down in s. 11, that the notice of disclaimer was of no effect. The landlord, having by his own action produced that result, could not thereafter change his attitude and say "This notice of disclaimer was of no effect at all, owing to the fact that the premises were not unfit at the time when the notice was served.' That would be approbating and reprobating, because the notice to avoid disclaimer quite properly informed the tenant that the landlord required him to retain the lease on the terms specified in the Act. It was only on the basis that the notice of disclaimer was served in circumstances of unfitness that the notice to avoid disclaimer could have any effect whatever, because the terms specified in the Act on which the tenant was to retain the lease involved modification of the contractual relationship between the parties. The landlord, having produced that legal consequence, could not afterwards turn round and say under s. 6 that the land was never unfit, and the notice was therefore a bad notice, and that if he succeeded on that, the change in the legal relationship brought about under s. 11 by his own act was going to be cancelled. Further, if the effect of serving the notice to avoid disclaimer was to make the notice of disclaimer of no effect his lordship could not see what subject-matter was left in the application. If the landlord afterwards asked for a determination under s. 6, he was asking the court to determine on a document which was a nullity. It was confirmation of this view that s. 6 (4) made provision for the case where the landlord, having attacked the notice of disclaimer on the ground that the land was not unfit, failed in his attack. If, with those rights in front of him, the landlord chooses to serve a notice of disclaimer, he could not thereafter make an application under s. 6. The appeal, which was an appeal on a preliminary point of law only, must be allowed.

MACKINNON, L.J., agreed, and added that the amendment amounted, not merely to a verbal alteration in the notice of 29th November, but also to granting the landlord permission to cancel the notice to avoid disclaimer. That was far beyond anything within the jurisdiction of the judge to grant upon the landlord's application.

GODDARD, L.J., agreed.

Appeal allowed with costs.

COUNSEL: *G. D. Squibb; Harry Lester.*

SOLICITORS: *Lucien Fior; James Brodie & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

R. *v.* Finlayson, *ex parte* the Applicant.

Humphreys, Tucker and Oliver, JJ. 14th January, 1941.

Military law—Army—Court-martial—Jurisdiction—Alleged murder on British ship on high seas by officer—Offence not deemed to have been committed in England—Jurisdiction of court-martial not excluded—Army Act, 1881 (44 & 45 *Vict. c.* 58), *s.* 41.

Application for a writ of prohibition.

The applicant, an officer on the General List, was charged under s. 41 of the Army Act with murdering a man on the high seas on a British ship, and he made this application for a writ of prohibition directed to the G.O.C., Western Command, and to the president of a General Court-martial before which he had been brought, to prohibit that court from proceeding to try him for the offence charged. It was contended on his behalf that the ship, certainly while on the high seas, was part of the United Kingdom; that the applicant must therefore be deemed to have been in the United Kingdom when the alleged offence was said to have been committed; and that he was accordingly entitled to trial by a judge and jury in the United Kingdom by virtue of the proviso to s. 41 of the Army Act.

HUMPHREYS, J., said that the Army Act included a section which made clear that nothing in the Act was to affect the jurisdiction of any civil court to try any person for any offence although that person was subject to military law. It therefore gave concurrent jurisdiction in certain cases to a court-martial, and provided for the trial by such a court of certain matters which were not offences at common law or under the ordinary civil law. By the proviso to s. 41 of the Army Act a person subject to military law was not to be tried by court-martial for, *inter alia*, "murder committed in the United Kingdom." The short point taken for the applicant was that the charge sheet, which was the basis of the jurisdiction of the General Court-martial, indicated that he was charged with having committed murder in the United Kingdom. The applicant's argument involved two propositions, of which the first was not, but the second was, disputed. It was undoubtedly correct that the jurisdiction of British courts applied also to persons on a British ship so long as she was on the high seas. Various statutes now regulated the method of trial of those who had committed offences on board British ships on the high seas. It was argued that it followed from that undisputed doctrine that a person who had committed a crime on a British ship on the high seas had committed a crime in England. The Solicitor-General contended that that second argument was a *non-sequitur*, and he (his lordship) agreed. It was almost a contradiction of the first part; for the undisputed doctrine was only needed because one began with the assumption that a crime was alleged to have been committed by a person who was not in England. The courts had jurisdiction to try a person who had committed a crime on a British ship as if he had committed it in England. The applicant's argument depended on the submission that the doctrine was based on a legal fiction that the British ship was part of the territory of England although it was not so in fact. In support of that argument, counsel referred to *Forbes* v. *Cochrane* (1824), 2 B. & C. 448, and *Reg.* v. *Anderson* (1868), 1 C.C.R. 161. The former decision was on a totally different point. It was argued that in the course of the judgments in that case it was assumed that the reason for the decision was that the ship in question was part of British territory, in other words, was to all intents and purposes England. The judgments could not, however, be so read. In *Reg.* v. *Anderson*, *supra*, the judges had accepted, merely as an illustration, the notion of a ship's being somewhat analogous to an island; and that was, no doubt, a convenient way of looking at the matter. The judgments, however, showed that that was of no assistance to the applicant's argument. A passage in Blackburn, J.'s judgment, at p. 169, clearly meant that persons on board a British ship were within the jurisdiction of the British courts although they were not within the territory of Great Britain. Counsel for the applicant also relied on s. 188 of the Army Act, which was at first sight difficult to understand. It provided: "where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he . . . were on land . . . where he embarked . . ." Counsel argued that that section explained s. 41 and showed that a person was to be assumed to be not only in England but also in that place in England from which the ship had sailed. His lordship, having referred to s. 122, said that he was satisfied that s. 188 only provided machinery dealing with the procedure, which would otherwise cause great difficulty, in the case of a crime alleged to have been committed on board a British ship. The application must be dismissed.

TUCKER and OLIVER, JJ., agreed.

COUNSEL: *W. K. Carter; The Solicitor-General* (Sir William Jowitt, K.C.) and *Valentine Holmes.*

SOLICITORS: *A. M. Longhurst & Butler; The Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

White *v.* Hurrell's Stores, Ltd.

Humphreys and Oliver, JJ. 17th January, 1941.

Case stated by Coventry justices.

At a court of summary jurisdiction at Coventry an information was preferred by an area enforcement officer of the Ministry of Food against the respondents, Hurrell's Stores, Ltd., under reg. 55 of the Defence Regulations, 1939, alleging that on the 29th March, 1940, they unlawfully sold at one of their shops an article of rationed food, namely bacon, without having in their possession, or receiving in exchange, a ration book coupon or other document available for lawful use in respect of the sale, contrary to art. 8 of the Rationing Order, 1939. The company pleaded guilty, and the following facts were established: An inspector of the Ministry of Food having entered the shop and asked to be served with bacon, a servant of the company sold him 11 oz. of bacon without the company's having in their possession, or receiving, a ration book coupon, and without there being any other document available for lawful use in respect of the sale. The manager of the shop when informed of the offence committed said

that he thought the inspector to be a registered customer, and that all registered customers had deposited their complete sheets of coupons at the shop. It was contended for the company, that, while they were admittedly at fault, the regulations were very onerous for a large multiple store like theirs, with some 500 registered customers. The justices, being of opinion that the offence was of a trivial nature, dismissed the information under s. 1 (1) of the Probation of Offenders Act, 1907. The informant appealed.

HUMPHREYS, J., said that the appellant had been supplied with bacon at the company's shop just as if there were no war or rationing. It had not been suggested that any servant of the company serving at the shop at the time had thought to recognise the appellant as a regular customer. The company had been well advised to plead guilty on the admitted facts. It was most disturbing to find that a bench of justices in a city like Coventry could be found to take the view that the offence which had been committed was so trivial that they had gone out of their way, in spite of a plea of guilty, to dismiss the information under the Probation of Offenders Act. There was no suggestion that the company had been deceived or tricked into the offence: they had clearly ignored the provisions of the Rationing Order. They appeared to have overlooked the fact that the rationing of food was an essential part of the successful prosecution of the war. The case must be remitted to the justices with a direction to convict the company. It would be for them to decide what penalty to impose for an offence which he (his lordship) considered to be extremely serious.

COUNSEL: *Douglas Jenkins.* There was no appearance by or for the company.

SOLICITOR: *The Town Clerk,* Coventry.

The case was heard by two judges only in the absence of Tucker, J., through indisposition.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Gould *v.* McAuliffe.

Singleton, J. 27th February, 1941.

Negligence—Licensed premises—Mischievous dog—Customer bitten—Duty of licensee.

Action for damages for negligence.

On the 14th June, 1940, the plaintiff had arranged to meet her husband at opening time at a public-house of which the defendant was occupier and licensee. She had last visited the public-house some three years before. When she arrived, her husband was not there. After she had waited for him for some time she wished to visit a lavatory. She accordingly followed a passage leading along the side of the hotel to the garden and bowling green. When she had last been there there had been a lavatory in the garden, but she now found that it had been removed. To her right she saw some outhouses beyond a fence some 3 feet 9 inches high, and, thinking that the lavatory might be among them, she passed through a gate which, the defendant stated in evidence, was generally kept latched but which on this occasion was partly open, and was at once attacked and injured by the defendant's dog. She accordingly brought this action, alleging that the defendant knew that the dog had a propensity to attack human beings. The defendant conceded that the use of the public-house to which he invited visitors covered use of the garden, but he contended that the invitation ceased at the fence which separated the garden from the yard where the outhouses were, a yard which he did not permit strangers to enter; that the yard was a private place used for storage and other purposes, and that the plaintiff became a trespasser on entering it, there being no reason why any visitor to the hotel should wish to do so. It was argued for the plaintiff that it was reasonable for anyone in her position, who was an invitee while in the garden, to think that the invitation extended through the gate to the yard; that it was reasonable to think that there was a lavatory among the outhouses because extensive outside premises usually included such a thing; that there was no reason why, in daylight, she should not try to find a lavatory; and that, although there was no express invitation to use that part of the premises, the lay-out of the premises and the fact that the gate was partly open constituted an implied invitation.

SINGLETON, J., having found as a fact that the plaintiff in passing through the gate was in the circumstances doing what any reasonable person would do in view of the nature of the premises, and that the defendant kept in the yard a dog which he knew to have a propensity to attack human beings, said that the case was different from those cited in argument where plaintiffs had fallen down steps or lift-shafts at hotels while walking in the dark. No warning of the dog had been exhibited near the gate. It was conceded for the defendant that he would be liable if the plaintiff could reasonably think that the invitation extended beyond the gate. He (his lordship) thought that she could so think, but he was not sure that that was the real test. There was nothing in respect of this yard like the user by other persons with the consent of the occupier which was to be found in the cases cited. His lordship, having referred to *Mersey Docks & Harbour Board* v. *Procter* [1923] A.C. 253; 67 SOL. J. 400, and *Liddle* v. *Yorkshire (North Riding) County Council* [1934] 2 K.B. 101; 78 SOL. J. 349, and to the defendant's argument that a landowner was not entitled to set dangerous traps in order to injure trespassers, but was under no liability if in trespassing they injured themselves, said that he found it difficult to decide the case on that point. He preferred to deal with it on another ground: the defendant had not placed anything on his premises for the purpose of injuring the plaintiff, yet he kept a savage dog in a yard separated from the garden only by a low fence. It was argued for the defendant that the reasoning of Lord Denman, C.J., in *May* v. *Burdett* (1846), 9 Q.B. 101, and of Platt, B., in *Jackson* v. *Smithson* (1846), 15 M. & W. 563, had gone too far, and that those decisions must be considered in the light of that of the Court of Appeal in *Lowery* v. *Walker* (reversed on other grounds in the House of Lords [1911] A.C. 10; 58 SOL. J. 62). It was clear that the House there would have agreed with the Court of Appeal that if the plaintiff had been a trespasser in the field in question he could not have recovered damages, the field being in fact one which the public were in the habit of crossing without leave. It was not easy here to distinguish, in the words of Lord Halsbury in that case, "between a person who was at a place as of right and a person who was a mere trespasser." In his (Singleton, J.'s) opinion the licensee of a public-house ought to take steps to ensure that any dangerous dog which he kept there was kept away from customers at his inn who were behaving reasonably. It was not reasonably careful on the part of the defendant to leave the gate to the yard open. He was under a duty to keep the dog secure so that it could not attack someone on his premises who mistakenly stepped one or two yards through an open gate. The circumstances were different from *Lowery* v. *Walker, supra.* The defendant should have realised that a person in the garden might easily pass through the gate. He had failed in a duty which he owed to the plaintiff, who, although she had not yet been supplied with any liquor, had yet visited the premises in order to be supplied. There must be judgment for the plaintiff for £150.

COUNSEL: *J. Davidson; Alban Gordon.*

SOLICITORS: *D. A. Terry & Co.; Oswald Hanson & Smith.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

The "Glenearn."

Lord Merriman, P. 26th February, 1941.

Exchange agreement with potential enemy—Contemplation of war—Bona fide—No collusive undertaking to disregard it if war did not break out—Delivery of goods to warehousemen for claimants before outbreak of war—Seizure after outbreak of war—Agreement not against public policy—Transactions ended—Claimants entitled to goods.

The Crown in this case sought a decree of condemnation of 198 drums of latex, weighing about 20 tons, which had been part of the cargo of s.s. "Glenearn," seized at London on 9th October, 1939. The claimants (Revertex, Ltd.) filed an appearance and entered a claim on the ground that they were an English corporation and sole owners of the latex, and were so at all material times.

On 18th April, 1939, the claimants had contracted with a German company of Frankfort for the exclusive sale of revertex, a rubber product, of which latex was a brand, for re-sale by itself or its subsidiaries in specified countries. The relevant date for calculating the price of this cargo was 4th September, 1939. The goods were "ascertained" within the meaning of the Sale of Goods Act, 1893, at the time of shipment and were consigned to order at Hamburg. On 23rd August, 1939, the "Glenearn" arrived in the Port of London, but owing to the international situation the voyage from there was abandoned. On 16th August the claimants had handed over the shipping documents in respect of the "Glenearn" cargo against acceptance of a bill of exchange for the price named in the provisional invoice. On 28th August the claimants agreed with their German consignees to substitute another 20 tons for the 20 tons from the "Glenearn" which were being unloaded into the Port of London Authority's warehouse. Five of the substituted 20 tons were clearly unascertained goods. On or about 1st September the claimants received back the shipping documents for the 20 tons and handed them to their warehousemen, who took delivery of the 20 tons from the "Glenearn" from the Port of London Authority's warehouse on 11th September, and the goods were received into the warehousemen's own warehouse on 12th September. There they were seized as prize on 9th October, 1939.

The PRESIDENT said that it was plain beyond any doubt that the exchange agreement was made *imminente bello*, in avowed contemplation of the difficulties which would arise if war broke out. On the other hand he was satisfied that the exchange agreement was made *bona fide* in the sense that there was no secret or collusive understanding that it was to be disregarded, if contrary to expectation, war should not break out. Mr. McKenna argued that a bargain of this kind, made by a British subject immediately before the outbreak of war, was void as being contrary to public policy. Alternatively, he argued that the goods were still *in transitu* as the claimants had never actually taken delivery themselves, but only through their warehousemen. The Legislature had not chosen to say that transactions with a potential enemy though concluded before the outbreak of war should be prohibited, and it was not for the court to invent doctrines of public policy in such matters. It was admitted that in English law the property in the 198 drums passed to the claimants. It followed that the delivery to the claimants' warehousemen, which alone occurred after the outbreak of war, was the obtaining by a British subject from bailees

who were British subjects, of his own goods in which the property had passed to him before war broke out. Turning to the prize laws governing the matter, where, under a contract for the sale of goods made before the outbreak of war between an enemy seller and a neutral buyer, the transfer of the property in the goods was made while the goods were still *in transitu*: (i) if the contract was made in the ordinary course of business and not in contemplation of war, and was a *bona fide* transaction in that there was no fraudulent or collusive reservation of rights to the seller, then although the buyer had not taken actual delivery before seizure, his claim was recognised in prize; (ii) if, however, the contract, though made *bona fide*, was made in contemplation of the outbreak of war, the buyer could not establish his claim to the goods unless he had taken actual delivery before seizure (*The Jan Frederick*, 5 C. Rob. 128; *The Baltia*, 2 Eng. P.C. 628; *The Southfield*, 31 T.L.R. 577; *The Daksa* [1917] A.C. 386; and *The Kronprinsessan Margareta* [1921] 1 A.C. 486, at p. 489). In this case the argument that delivery to agents did not avail the claimants (*The Bawean* [1918] P. 58) did not apply, as it was uncontradicted that the claimants had no warehouse of their own and invariably stored with this or another named warehouse company. The claimants in this case took actual delivery, at the latest, on the arrival of the goods at the warehouse in the only way in which as a matter of practical business they could take delivery, and this had been done before seizure by the Crown (*The Vesta* [1921] A.C. 774, at p. 776). The claimants had established their claim and were entitled to judgment for the release of their goods accordingly.

COUNSEL: *B. J. M. McKenna; Cyril Miller.*

SOLICITORS: *Treasury Solicitor; Mayo, Elder & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law]

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. GEOFFREY WALTER WRANGHAM be appointed Recorder of York, to succeed Mr. N. L. C. Macaskie, K.C., who has been appointed Recorder of Sheffield.

The Board of Trade have appointed, from 21st April last, Mr. EDWIN THOMAS SANDERS, Assistant Official Receiver in the Companies (Winding-Up) Department, to be Official Receiver in Bankruptcy for the Bankruptcy districts of the County Courts held at Bradford, Dewsbury, Halifax and Huddersfield, in the place of Mr. W. F. Cresswell.

Dr. HAROLD G. BROADBRIDGE, of Harley Street, W., formerly deputy coroner for West London, has been appointed Coroner for West Middlesex in succession to Mr. Reginald Kemp, who retired recently.

Mr. E. J. COPE BROWN, assistant solicitor in the Town Clerk's Department, Reading, has been appointed Assistant Solicitor to the Nottingham Corporation. He was admitted a solicitor in 1934.

Mr. HUBERT CROSSLEY, assistant solicitor to the Stepney Borough Council, has been appointed Conveyancing Solicitor to the Sheffield Corporation. He was admitted a solicitor in 1928.

The Carlisle City Council have appointed Mr. GEORGE RICHARDSON, at present Assistant Solicitor to the Corporation, as Deputy Town Clerk, from the 1st June, 1941, in succession to Mr. James A. Baird, who was recently appointed Town Clerk of Maidenhead. Mr. Richardson was admitted a solicitor in 1938 and Mr. Baird in 1935.

Notes.

An Order formally establishing war zone courts throughout England and Wales has been made by the Minister of Home Security under reg. 2 of the Defence (War Zone Court) Regulations, 1940. A note on the Order will appear in our next issue.

The Judicial Committee of the Privy Council commenced their Easter Sittings on Monday last with a list of 14 appeals. Ten are from India, and one each from West Africa, Hong-kong, Palestine and Ceylon. Five judgments await delivery.

According to a note in *The Times*, in a recent appeal to a Divisional Court of the Probate, Divorce and Admiralty Division from an order for maintenance made against a husband by a magistrate, Lord Merriman deprecated the use of a rubber-stamp indorsement on the order, the practical effect of which was to make the order one to pay a weekly allowance free of tax. Tax-free orders for maintenance were, he said, not made nowadays in the Divorce Division, and the sooner the rubber-stamp practice was abandoned the better. The order would be varied by striking out the tax-free references.

Wills and Bequests.

Mr. George Drayton Elliman, solicitor, of Eastbourne, late of Southampton Street, W.C., left £24,148, with net personalty £22,444.

Books Received.

Tables showing Income Tax at 6s. 6d. and 10s. in the £ on 1d. to £100,000. London: Edwards & Smith (London), Ltd. Price 10d. each, post free.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

The report of the directors of The Solicitors' Law Stationery Society, Limited, states that the Society's sales have been seriously reduced by the effect of the war on legal business. This reduction, in conjunction with considerable extra expenditure arising from war conditions and a policy of raising prices only when absolutely necessary, has resulted in a loss of £6,442 3s. 5d. being made in the year 1940. The Directors, therefore, regret that they are unable to recommend the payment of a dividend or bonuses. The sum of £6,507 15s. 10d. is being carried forward.

The annual meeting will be held at 102–107, Fetter Lane, E.C.4, on Tuesday, 6th May, at 12.30 p.m.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
May 5	More	Andrews	Jones
,, 6	Blaker	Jones	Hay
,, 7	Andrews	Hay	More
,, 8	Jones	More	Blaker
,, 9	Hay	Blaker	Andrews
,, 10	More	Andrews	Jones

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT. Witness.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE MORTON. Non-Witness.	MR. JUSTICE UTHWATT. Witness.
	Mr.	Mr.	Mr.	Mr.
May 5	Andrews	Blaker	Hay	More
,, 6	Jones	Andrews	More	Blaker
,, 7	Hay	Jones	Blaker	Andrews
,, 8	More	Hay	Andrews	Jones
,, 9	Blaker	More	Jones	Hay
,, 10	Andrews	Blaker	Hay	More

EASTER AND TRINITY SITTINGS, 1941.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Mr. Justice FARWELL.

At the beginning of the Sittings Mr. Justice FARWELL will sit for the disposal of the Non-Witness List.

Mondays ... Bankruptcy Business.

Bankruptcy Judgment Summonses will be heard on Mondays, 5th and 26th May, 23rd June and 14th July.

Bankruptcy Motions will be heard on Mondays 28th April, 19th May, 16th June and 7th July.

A Divisional Court in Bankruptcy will sit on Mondays 12th May, 30th June and 21st July.

GROUP A.

Mr. Justice BENNETT.

(Witness List.)

Mr. Justice BENNETT will sit daily for the disposal of the List of Witness Actions.

Mr. Justice SIMONDS.

(Non-Witness List.)

Mondays ... Chamber Summonses.
Tuesdays ... Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Fridays .... Motions and Adjourned Summonses.

Lancashire Business will be taken on Thursdays, 8th and 22nd May, 19th June, 3rd and 17th July.

GROUP B.

Mr. Justice MORTON.

(Non-Witness List.)

Mondays ... Chamber Summonses.
Tuesdays ... Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Fridays .... Motions and Adjourned Summonses.

Mr. Justice UTHWATT.

(Witness List.)

Mondays ... Companies (Winding up) Business.
Tuesdays, Wednesdays, Thursdays } The Witness List.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.